

REMARKSPresent Status of Patent Application

No claim has been amended hereby, and claims 40-43 remain pending in the present application.

Rejection Under 35 U.S.C. § 103(a)

The Claims 40-43 were rejected under 35 USC §103(a) over *Robertson et al.*, U.S. 5,487,378 in view of *Marks et al.* U.S. 5,976,344 and/or *Abys et al.*, U.S. 5,529,055.

In the Action, the rejection under §103(a) was maintained, as it was asserted that it would be obvious to electroform an aperture plate using a palladium or pallidium metal alloy. Support for this position was offered by citing Robertson column 3, lines 14-36.

Applicant continues to contend that Robertson is inapposite, and teaches away from applicant's claimed invention, as demonstrated by the following analysis of the cited passage from Robertson:

The nozzles may be fabricated by the same technique to manufacture microsieves, e.g., electro forming in nickel. Alternatively, the nozzle arrangement may be formed by patterned anisotropic etching through a thin semiconductor wafer, e.g., of silicon or germanium. Alternatively, plastics nozzle arrays may be used.

Robertson, Column 3, lines 31-36.

It is clear from this passage (cited by the Examiner), that: (1) the disclosure of electroforming as a process to form the apertures is **limited to nickel**; and (2) the alternative materials of silicon or germanium are disclosed **only in conjunction** with an equally alternative process, that is anisotropic etching. Anisotropic etching is not equivalent to electroforming. Rather is is a chemical dissolution process, which in many

ways it is the exact inverse, or opposite, of electroforming as it relates to the removal of substrate to yield the desired product.

Finally, with regard to the last sentence of the cited passage, it is clear that any pastic nozzle contemplated by Robertson is not going to be made by an electrochemical process.

Moreover, Robertson is devoid of any mention of palladium, or any platinum group metal apart **from nickel**. Unquestionably, Robertson knew palladium to be a platinum group metal (related to nickel), yet Robertson choose not to disclose palladium, **or any other platinum group metal**.

Accordingly, Applicant contends that Robertson **does, in fact, teach away** from applicant's claimed invention, and that the *prima facie* case of obviousness has not been established.

Thus, in view of its limitation to nickel as the substrate for electroforming, the disclosure of *Robertson et al.*, teaches away from the use of any other metal.

Nor is there any disclosure, teaching or suggestion in Robertson of an alloy comprised of about 80% palladium and about 20% nickel, as recited in claim 43.

Applicant again respectfully submits the Office's burden has not been met, because there is no objective reason why one skilled in the art, when reviewing the *Robertson et al.* reference, which teaches an aerosol generator made of nickel, would be motivated to replace the material with an electroformed palladium or palladium alloy, merely because such materials are generally disclosed in the electrodeposition art (*Abys et al.* and/or *Marks et al.*)

For these reasons, Applicants submit that claim 40 is allowable over the cited references.

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Finally, claims 41-43 are dependent upon claim 40. If independent claim 40 is allowable over the prior art of record, then its dependent claims, are allowable as a matter of law, because these dependent claims contain all features/elements/steps of their respective independent claim. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the allowability of claim 40, these dependent claims recite further features/steps and/or combinations of features/steps (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

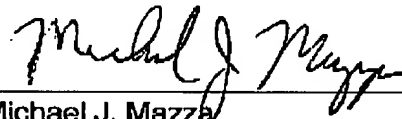
If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-631-3271.

Respectfully submitted,  
Nektar Therapeutics

Date: \_\_\_\_\_

11/8/07

By: \_\_\_\_\_



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